



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 7917-98

13 October 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by removing the nonjudicial punishment (NJP) of 10 June 1997. Additionally, he requests reinstatement to active duty as an MR2 (E-5).

2. The Board, consisting of Mr. Cali, Mr. Morgan, and Mr. Silberman, reviewed Petitioner's allegations of error and injustice on 18 August 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner reenlisted in the Navy for six years on 14 May 1992 after more than three years of prior active service.

d. Petitioner served without incident until 10 June 1997 when he received NJP for fraternization and adultery. The punishment imposed consisted of reduction in rate to MR3 (E-4), an oral reprimand, and restriction and extra duty for 14 days. Petitioner appealed the NJP on 13 June 1997 and the NJP authority recommended the appeal be denied on 18 June 1997.

e. On 30 June 1997 Petitioner's appeal of his NJP was partially granted. The appeal authority dismissed the charge of adultery and dismissed the restriction and extra duty. However, he affirmed the finding that Petitioner committed fraternization and the punishment of reduction and reprimand.

f. On 6 May 1998 Petitioner was allowed to extend his six-year enlistment for two months. Accordingly, his enlistment would not expire until 13 July 1998. However, he was honorably discharged by reason of high year tenure on 14 June 1998, with exactly 10 years of service.

g. An advisory opinion, dated 8 July 1999, from the Favorable Enlisted Separations Section, Navy Personnel Command (NPC), stated that Petitioner was discharged properly but recommended a 15 June vice 14 June 1998 separation date.

h. In a rebuttal to the advisory opinion, Petitioner contends, in effect, that the Board should focus on his NJP. Petitioner argues that his NJP was based on rumor and hearsay and that he was not guilty of fraternization with the junior enlisted woman who now is his wife.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. While not granting relief on Petitioner's requests of reinstatement and removal of the NJP, the Board notes that Petitioner had executed a valid two month extension on 6 May 1998 and could not be separated by reason of high year tenure prior to its completion. The advisory opinion misses the entire point that once a valid extension is executed, it cannot be terminated early at the whim of the command. The correct date of discharge is not 14 or 15 June but 13 July 1998, when the six year enlistment and two month extension would have been completed. A phone call with NPC officials revealed that no regulations support the position that a valid extension may be terminated once it has been executed.

Concerning the 10 June 1997 NJP, the NJP authority may impose punishment when he concludes the preponderance of the evidence establishes that the accused committed the offense charged. Along these lines, the Board concurs with the rationale for the NJP authority's decision as set forth in the endorsement of 18 June 1997. The Board believes that the NJP authority's findings should remain undisturbed absent clear evidence of an abuse of discretion. Petitioner's application and supporting evidence do not provide a sufficient basis to conclude the NJP authority acted erroneously or improperly. Accordingly, the Board concludes the NJP should remain in the record, and Petitioner should not be reinstated in the Navy.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was honorably discharged by reason of expiration of enlistment on 13 July 1998 vice the 14 June 1998 discharge by reason of high year tenure.

b. That no further relief be granted.

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

d. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 8 November 1998.

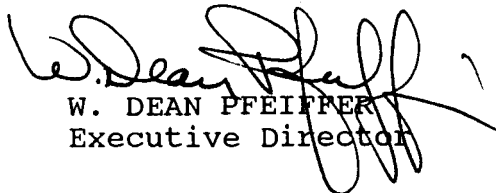
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director